

06/20/03
17364 U.S. PTO

16424 U.S. PTO
10/601014
06/20/03

NEW APPLICATION TRANSMITTAL

Transmitted herewith for filing is the patent application of
Inventor(s):

Allen Carl, Ricky D. Hart, Josef K. Winkler

WARNING: 37 C.F.R. Section 1.41(a)(1) points out:

"(a) A patent is applied for in the name or names of the actual inventor or inventors.

(1) The inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by Section 1.63, except as provided for in Section 1.53(d)(4) and Section 1.63(d). If an oath or declaration as prescribed by Section 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to Section 1.53(b), unless a petition under this paragraph accompanied by the fee set forth in Section 1.17(i) is filed supplying or changing the name or names of the inventor or inventors."

For (title):

SYSTEMS, METHODS, DEVICES AND DEVICE KITS FOR FIXATION OF BONES AND SPINAL VERTEBRAE (AS AMENDED)

1. Type of Application

This new application is for a(n)

(check one applicable item below)

- ☐ Utility (nonprovisional)
- ☐ Design
- ☐ Plant

NOTE: *If one of the following 3 items apply, then complete and attach ADDED PAGES FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF A PRIOR U.S. APPLICATION CLAIMED and a NOTIFICATION IN PARENT APPLICATION OF THE FILING OF THIS CONTINUATION APPLICATION.*

- ☐ Divisional.
- ☒ Continuation.
- ☐ Continuation-in-part (C-I-P).

2. Benefit of Prior U.S. Application(s) (35 U.S.C. Sections 119(e), 120, or 121)

- ☒ The new application being transmitted claims the benefit of prior U.S. application(s). This application claims priority to U.S. Patent Application No. 09/536,732, filed March 28, 2000, which claims priority to U.S. Provisional Application No. 60/133,356, filed May 10, 1999. The entireties of these applications are incorporated by reference herein.

3. Papers Enclosed

A. Required for Filing Date under 37 C.F.R. Section 1.53(b) (Regular) or 37 C.F.R. Section 1.153 (Design) Application

34 Pages of Specification
13 Pages of Claims
14 Sheets of drawing figures (FORMAL)

4. Additional Papers Enclosed

- ☒ Copy of Recordation Assignment;
- ☐ Cancel in this applications claim _____ before calculating the filing fee. (At least one original independent claim must be retained for filing purposes.)
- ☐ Add the claims shown on the attached amendment _____. (Claims added have been numbered consecutively following the highest numbered original claims.)
- ☒ Preliminary Amendment
- ☒ Information Disclosure Statement (37 C.F.R. Section 1.98)
- ☒ Form PTO-1449 (PTO/SB/08A and 08B) (citations provided in U.S.S.N. 09/536,732)
- ☐ Citations
- ☐ Declaration of Biological Deposit
- ☐ Submission of "Sequence Listing," computer readable copy and/or amendment pertaining thereto for biotechnology invention containing nucleotide and/or amino acid sequence.
- ☐ Authorization of Attorney(s) to Accept and Follow Instructions from Representative
- ☐ Special Comments
- ☒ Other: Abstract (1pg.)

5. Declaration or Oath (including power of attorney)

- ☒ Enclosed (copy of Declaration and Power of Attorney filed in U.S.S.N. 09/536,732)

Executed by

(check all applicable boxes)

- ☒ inventor(s).
- ☐ legal representative of inventor(s). 37 C.F.R. Section 1.42 or 1.43.
- ☐ joint inventor or person showing a proprietary interest on behalf of inventor who refused to sign or cannot be reached.
- ☐ This is the petition required by 37 C.F.R. Section 1.47 and the statement required by 37 C.F.R. Section 1.47 is also attached. See item 13 below for fee.

- ☐ Not Enclosed.

- ☐ Application is made by a person authorized under 37 C.F.R. 1.41 on behalf of *all* the above named inventor(s).

(The declaration or oath, along with the surcharge required by 37 C.F.R. Section 1.16(e), can be filed subsequently).

- ☐ Showing that the filing is authorized.
(not required unless called into question. 37 C.F.R. Section 1.41(d))

6. Inventorship Statement

WARNING: *If the named inventors are each not the inventors of all the claims an explanation, including the ownership of the various claims at the time the last claimed invention was made, should be submitted.*

The inventorship for all the claims in this application are:

☒ The same.

or

☐ Not the same. An explanation, including the ownership of the various claims at the time the last claimed invention was made,

☐ is submitted.

☐ will be submitted.

7. Language

NOTE: *An application including a signed oath or declaration may be filed in a language other than English. An English translation of the non-English language application and the processing fee of \$130.00 required by 37 C.F.R. Section 1.17(k) is required to be filed with the application, or within such time as may be set by the Office. 37 C.F.R. Section 1.52(d).*

☒ English

☐ Non-English

☐ The attached translation includes a statement that the translation is accurate. 37 C.F.R. Section 1.52(d).

8. Assignment

☒ Assignment of the invention has been filed and recorded in the parent application U.S.S.N. 09/536,732 at Reel No. 011189 and Frame No. 0565 (Copy enclosed).

☐ will follow.

NOTE: *"If an assignment is submitted with a new application, send two separate letters-one for the application and one for the assignment" Notice of May 4, 1990 (1114 O.G. 77-78).*

WARNING: *A newly executed "STATEMENT UNDER 37 C.F.R. Section 3.73(b)" must be filed when a continuation-in-part application is filed by an assignee. Notice of April 30, 1993, 1150 O.G. 62-64.*

NOTE: *The foreign application forming the basis for the claim for priority must be referred to in the oath or declaration. 37*

NOTE: This item is for any foreign priority for which the application being filed directly relates. If any parent U.S. application or International Application from which this application claims benefit under 35 U.S.C. 120 is itself entitled to priority from a prior foreign application, then complete item 18 on the ADDED PAGES FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF PRIOR U.S. APPLICATION(S) CLAIMED.

9. Fee Calculation (37 C.F.R. Section 1.16)

A. ☐ Regular application

CLAIMS AS FILED

| Claims | Number Filed | Basic Fee Allowance | Number Extra | Rate | Basic Fee 37 C.F.R. Section 1.16(a) \$ 375.00 |
|--|--------------|---------------------|--------------|---------|--|
| Total Claims (37 C.F.R. Section 1.16(c)) | 36 | 20 | 16 | \$ 9.00 | \$ 144.00 |
| Independent Claims (37 C.F.R. Section 1.16(b)) | 8 | 3 | 5 | 42.00 | \$210.00 |

- ☐ Amendment cancelling extra claims is enclosed.
☐ Amendment deleting multiple-dependencies is enclosed.
☐ Fee for extra claims is not being paid at this time.

NOTE: If the fees for extra claims are not paid on filing they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for response by the Patent and Trademark Office in any notice of fee deficiency. 37 C.F.R. Section 1.16(d).

Filing Fee Calculation \$ 729.00.

B. ☐ Design application
(\$330.00--37 C.F.R. Section 1.16(f))

Filing Fee Calculation \$ _____

C. ☐ Plant application
(\$510.00--37 C.F.R. Section 1.16(g))

Filing Fee Calculation

\$ _____

10. **Small Entity Statement(s)**

☒ Pursuant to 37 CFR 1.27, Applicants claim small entity status.

11. **Request for International-Type Search (37 C.F.R. Section 1.104(d))**

(complete, if applicable)

☐ Please prepare an international-type search report for this application at the time when national examination on the merits takes place.

12. **Fee Payment Being Made at This Time**

☐ Not Enclosed

☐ No filing fee is to be paid at this time.

(This and the surcharge required by 37 C.F.R. Section 1.16(e) can be paid subsequently.)

☒ Enclosed

☒ Filing fee

☐ Petition fee for filing by other than all the inventors or person on behalf of the inventor where inventor refused to sign or cannot be reached
(\$130.00; 37 C.F.R. Sections 1.47 and 1.17(i))\$

☐ For processing an application with a specification in a non-English language
(\$130.00; 37 C.F.R. Sections 1.52(d) and 1.17(k))\$

☐ Processing and retention fee
(\$130.00; 37 C.F.R. Sections 1.53(d) and 1.21(l))\$

☐ Fee for international-type search report
(\$40.00; 37 C.F.R. Section 1.21(e)) \$

NOTE: 37 C.F.R. Section 1.21(l) establishes a fee for processing and retaining any application that is abandoned for failing to complete the application pursuant to 37 C.F.R. Section 1.53(f) and this, as well as the changes to 37 C.F.R. Section 1.53 and 1.78(a)(1), indicate that in order to obtain the benefit of a prior U.S. application, either the basic filing fee must be paid; or the processing and retention fee of Section 1.21(l) must be paid, within 1 year from notification under Section 53(f).

Total Fees Enclosed

\$ 729.00

13. Method of Payment of Fees

☒ Check in the amount of \$ 729.00

☐ Charge Account No. 04-1105 in the amount of \$

NOTE: Fees should be itemized in such a manner that it is clear for which purpose the fees are paid. 37 C.F.R. Section 1.22(b).

14. Authorization to Charge Additional Fees

WARNING: *If no fees are to be paid on filing, the following items should not be completed.*

WARNING: *Accurately count claims, especially multiple dependent claims, to avoid unexpected high charges, if extra claim charges are authorized.*

☒ The Commissioner is hereby authorized to charge any additional fees by this paper and during the entire pendency of this application to Account No. 04-1105.

15. Instructions as to Overpayment

NOTE: "... Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amounts; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account." 37 C.F.R. Section 1.26(a).

☒ Credit Account No. 04-1105.

☐ Refund

June 20, 2003

Tel. No.: (617) 439-4444



21874

PATENT TRADEMARK OFFICE

SIGNATURE OF PRACTITIONER

William J. Daley, Jr.

Reg. No. 35,487

EDWARDS & ANGELL, LLP

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Boston, MA 02209

Preliminary Classification:
Proposed Class:
Subclass:

NOTE: "All applicants are requested to include a preliminary classification on newly filed patent applications. The preliminary classification, preferably class and subclass designations, should be identified in the upper right-hand corner of the letter of transmittal accompanying the application papers, for example 'Proposed Class 2, subclass 129.'" M.P.E.P. Section 601, 7th ed.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mail Stop Patent Application
Commissioner for Patents
P.O. Box 1450
Alexandria, Va 22313-1450

CERTIFICATION UNDER 37 C.F.R. SECTIONS 1.8(a) AND 1.10*

(When using Express Mail, the Express Mail label number is *mandatory*;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

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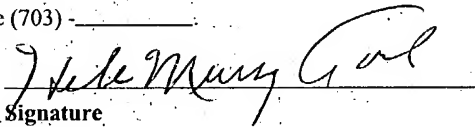
- ☐ deposited with the United States Postal Service in an envelope addressed to Mail Stop Box Patent Application, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
37 C.F.R. Section 1.8(a) 37 C.F.R. Section 1.10*

- ☐ with sufficient postage as first class mail. ☒ as "Express Mail Post Office to Address"
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- ☐ transmitted by facsimile to the Patent and Trademark Office (703) - _____

Date: June 20, 2003


Signature

Helen Murray Tarbi

***WARNING:** Each paper or fee filed by "Express Mail" must have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. Section 1.10(b).
"Since the filing of correspondence under [Section] 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will **not** be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL (37 CFR 1.8)

Applicant(s): Allen Carl, Ricky D. Hart, and Josef K. Winkler

Docket No.

49,386 (1995)

Serial No.

09/536,732

Filing Date

March 28, 2000

Examiner

Not Yet Assigned

Group Art Unit

3738

Invention: **SYSTEMS AND METHODS FOR SPINAL FIXATIOAN**I hereby certify that this assignment; assignment recordation cover sheet; and check for \$40.00*(Identify type of correspondence)*

is being deposited with the United States Postal Service as first class mail in an envelope addressed to: The

Commissioner of Patents and Trademarks, Washington, D.C. 20231-0001 on

19 October 2000.*(Date)*Deborah Barfield*(Typed or Printed Name of Person Mailing Correspondence)*Deborah Barfield*(Signature of Person Mailing Correspondence)***Note: Each paper must have its own certificate of mailing.**